

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BAVARIAN NORDIC A/S and)	
ANTON MAYR,)	
)	
Plaintiff,)	
v.)	C.A. No. 05-614 (SLR)
)	
ACAMBIS INC. and)	REDACTED
ACAMBIS PLC,)	PUBLIC VERSION
)	
Defendants.)	
)	
)	

APPENDIX TO
REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS,
OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT, ON ALL CLAIMS

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Original Filing Date: January 12, 2007
Redacted Filing Date: January 19, 2007
679043.1

TABLE OF EXHIBITS

Exhibit	Description	CONFIDENTIALITY DESIGNATION
58	ITC Initial Determination September 6, 2006	CONFIDENTIAL
59	Deposition of Robert Drillien November 24, 2006	CONFIDENTIAL
60	NIH letter to Moss August 1, 2006	PUBLIC
61	ITC Hearing Transcript May 8, 2006	CONFIDENTIAL
62	Deposition Transcript of Peter Wulff February 9, 2006	CONFIDENTIAL
63	ITC Statement of Undisputed Facts March 20, 2006	CONFIDENTIAL
64	Deposition Transcript of Nicholas Higgins August 25, 2006	CONFIDENTIAL
65	European Patent Specification EP 1 335 987 B1	PUBLIC

EXHIBIT 58

CONFIDENTIAL EXHIBIT

EXHIBIT 59

CONFIDENTIAL EXHIBIT

EXHIBIT 60



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health
Bethesda, Maryland 20892

AUG 1 2006

VIA U.S. MAIL

Dr. Bernard Moss
National Institute of Allergy
and Infectious Diseases
National Institutes of Health
4 Memorial Drive, MSC 0445
Bethesda, Maryland 20892

Re: Subpoena Duces Tecum and Subpoena Ad Testificandum, Case Number 05-614-SLR, Bavarian Nordic A/S v. Acambis, Inc. and Acambis, PLC

Dear Dr. Moss:

This is to provide you with direction and guidance in preparing for the testimony that you have been compelled by subpoena to provide in the above-referenced litigation between Bavarian Nordic A/S and Acambis, Inc.

The scope of the subpoena is limited to activities outside of your official Government duties. Specifically, the subpoena is limited to testimony and documents relating to your consultancy with Oravax, and/or its corporate successor, Acambis. As a result, this agency has not had occasion to review or approve any potential testimony by you.

You have retained independent, outside counsel to represent you in your private capacity, and we will play no role in that representation. An agency attorney and/or an attorney from the Department of Justice also will be present at the deposition to defend the Government's interests including any official Government matters involving you that may arise.

In accordance with 45 C.F.R. Part 2 (specifically, §§ 2.3 and 2.4) and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), you are not authorized to provide any testimony on or to answer questions that seek information related to your official Government activities. This agency has not had an opportunity to review or approve such testimony because the subpoena is limited to your outside consultancy. Further, testimony regarding your official duties may unnecessarily compromise privileged Government information. You should also not offer any opinion relating to the MVA strain and the contracts at issue, the litigation in general, or the respective positions of the

Moss 2
DEPOSITION
EXHIBIT

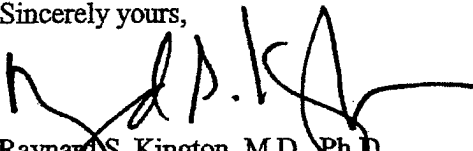
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parties. During the course of your testimony, agency or Department of Justice counsel may object to questions offered by the Bavarian Nordic counsel and may instruct you not to answer a question if the answer would reveal information related to your Government employment. You should comply with the instructions of the agency or Department of Justice counsel.

Counsel representing you in your private capacity and Bavarian Nordic counsel have been provided copies of this letter in order to make them aware of the agency's position on the scope of testimony that you will provide.

If you should have any questions regarding this matter, please direct them to me or to Dr. Dale Berkley (301-451-4911) of the NIH Branch of the Office of the General Counsel.

Sincerely yours,



Raynard S. Kington, M.D., Ph.D.
Deputy Director

cc: Mr. Kevin Collins
Covington & Burling

Mr. Don Riding
Covington & Burling

Mr. Robert Bertin
Bingham McCutchen

Ms. Erica Franklin
Department of Justice

Dr. Dale Berkley
Office of the General Counsel, HHS

EXHIBIT 61

CONFIDENTIAL EXHIBIT

EXHIBIT 62

CONFIDENTIAL EXHIBIT

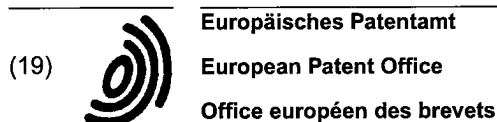
EXHIBIT 63

CONFIDENTIAL EXHIBIT

EXHIBIT 64

CONFIDENTIAL EXHIBIT

EXHIBIT 65



(11) **EP 1 335 987 B1**

(12) **EUROPEAN PATENT SPECIFICATION**

- (45) Date of publication and mention of the grant of the patent:
28.12.2005 Bulletin 2005/52
- (51) Int Cl.⁷: **C12N 15/863, C12N 15/39, C12N 7/04, A61K 39/285, A61K 48/00**
- (21) Application number: **01991753.3**
- (86) International application number:
PCT/EP2001/013628
- (22) Date of filing: **22.11.2001**
- (87) International publication number:
WO 2002/042480 (30.05.2002 Gazette 2002/22)

(54) **MODIFIED VACCINIA ANKARA VIRUS VARIANT**

VARIANTE DES MODIFIZIERTEN VACCINIA ANKARA VIRUS

VARIANT MODIFIE DU VIRUS DE LA VACCINE ANKARA

- | | |
|--|---|
| <p>(84) Designated Contracting States:
 AT BE CH CY DE DK ES FI FR GB GR IE IT LI LU MC NL PT SE TR
 Designated Extension States:
 AL LT LV MK RO SI</p> <p>(30) Priority: 23.11.2000 DK 200001764</p> <p>(43) Date of publication of application:
 20.08.2003 Bulletin 2003/34</p> <p>(60) Divisional application:
 05017694.0 / 1 598 425</p> <p>(73) Proprietor: Bavarian Nordic A/S
 3490 Kvistgaard (DK)</p> <p>(72) Inventors:
 <ul style="list-style-type: none"> • CHAPLIN, Paul
 81247 München (DE) • HOWLEY, Paul
 82152 Martinsried (DE) • MEISINGER, Christine
 82194 Gröbenzell (DE) </p> | <p>(74) Representative: Alt, Michael
 Bavarian Nordic GmbH,
 Fraunhoferstrasse 13
 82152 Martinsried (DE)</p> <p>(56) References cited:
 WO-A-01/68820 WO-A-97/02355
 US-A- 5 789 245</p> <ul style="list-style-type: none"> • BENDER B. S. ET AL.: "ORAL IMMUNIZATION WITH A REPLICATION-DEFICIENT RECOMBINANT VACCINIAVIRUS PROTECTS MICE AGAINST INFLUENZA" JOURNAL OF VIROLOGY, vol. 70, no. 9, 1 September 1996 (1996-09-01), pages 6418-6424, XP002055082 ISSN: 0022-538X • MEYER H. ET AL.: "MAPPING OF DELETIONS IN THE GENOME OF THE HIGHLY ATTENUATED VACCINIA VIRUS MVA AND THEIR INFLUENCE ON VIRULENCE" JOURNAL OF GENERAL VIROLOGY, vol. 72, 1991, pages 1031-1038, XP000952390 ISSN: 0022-1317 |
|--|---|

Note: Within nine months from the publication of the mention of the grant of the European patent, any person may give notice to the European Patent Office of opposition to the European patent granted. Notice of opposition shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the opposition fee has been paid. (Art. 99(1) European Patent Convention).

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2007, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to the following:

John W. Shaw, Esquire
YOUNG CONAWAY STARGATT & TAYLOR LLP
The Brandywine Building, 17th Floor
1000 West Street
Wilmington, DE 19801

Additionally, I hereby certify that true and correct copies of the foregoing were caused to be served on January 19, 2007 upon the following individuals in the manner indicated:

BY E-MAIL AND HAND DELIVERY

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/s/ James W. Parrett, Jr.

James W. Parrett, Jr. (#4292)